

In the Court of Appeals of the State of Alaska

James M Marquez,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-11925**

Order

Remand to the Trial Court

Date of Order: **September 21, 2020**

Trial Court Case No. **3AN-12-03395CR**

Before: Allard, Chief Judge, Harbison, Judge, and
Mannheimer, Senior Judge.*

The remaining issue in this case involves Marquez's pre-trial motion seeking discovery of medical records pertaining to an alleged abortion that the victim purportedly underwent shortly before the homicide. This Court remanded Marquez's case to the superior court, directing that court to conduct further proceedings regarding Marquez's pre-trial motion. The superior court has now issued an order affirming the original trial judge's denial of the requested pre-trial discovery.

In its ruling, the superior court made no finding as to whether there was reason to believe that the requested medical records existed at any of the three Anchorage health care providers named in Marquez's motion (Alaska Women's Health Services, Planned Parenthood (Anchorage), and Providence Medical Center). Instead, the major premise of the superior court's ruling was the court's conclusion that Marquez failed to offer any reason to believe that the requested medical records would be relevant, even if they existed. That conclusion is mistaken.

Marquez raised a defense of heat of passion. In his trial testimony, Marquez asserted that, just before he shot the victim, the victim informed him that she

*Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

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had ended her pregnancy — a pregnancy by Marquez. If there are records showing that the victim underwent an abortion shortly before the homicide, this would make it more likely that Marquez was telling the truth about what the victim said to him.

We therefore remand Marquez's case to the superior court again, and we direct the superior court to resume its consideration of Marquez's pre-trial discovery motion.

The superior court shall inform this Court of its decision by noon on **Tuesday, October 27, 2020.**

Entered at the direction of the Court.

Clerk of the Appellate Courts



Carly Williams, Deputy Clerk

cc: Court of Appeals Judges
Judge Peterson
Trial Court Clerk

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